

Rick L. & Amy J. Sovereign  
 401 Cherry Ave.  
 Oregon City, OR. 97045

## UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON – PORTLAND DIVISION

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RICK L. SOVEREIGN and AMY J.  
 SOVEREIGN,

Case No. **CV 11 995 BR**

Plaintiffs,

vs.

**VERIFIED COMPLAINT FOR  
EMERGENCY DECLARATORY RELIEF**

DEUTSCHE BANK, MORTGAGEIT, INC.,  
 MORTGAGE ELECTRONIC  
 REGISTRATION SYSTEM,  
 CITIMORTGAGE and  
 CAL-WESTERN RECONVEYANCE  
 CORPORATION;

Defendants.

**I. PLAINTIFFS' STATEMENT OF THE CASE**

This is a civil action seeking declaratory relief. Defendants, and all of them, an association in fact, have caused a Notice of Default and Election to Sell, claiming an amount due, to issue respecting the property owned by Plaintiffs located at 401 Cherry Avenue, Oregon City, OR 97045, hereinafter "Subject Property." Plaintiffs assert that Defendants are owed nothing by Plaintiffs and therefore any affirmative claim on the part of Defendants that Plaintiffs are in default and that Defendants possess the authority to invoke and execute on an illegal power of sale against the Subject Property is false. This declaratory relief action seeks to resolve the justiciable controversy.

Plaintiffs are unschooled in the legal arts and are least sophisticated consumers as that term is used in the Fair Debt Collection Practices Act.

1 Defendants are the superior party and have documents, which Defendants will not  
 2 provide and are essential to this lawsuit. Heretofore Defendants have deliberately withheld such  
 3 documents from Plaintiffs, despite repeated requests from Plaintiffs.

## 4 **II. JURISDICTION**

5 The transactions and events which are the subject matter of this Petition all occurred  
 6 within the District of Oregon. The amount in dispute is equivalent to the now current value of  
 7 the Subject Property, which exceeds \$75,000.

8 This case arises under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and  
 9 2202. Jurisdiction is conferred upon this court pursuant to 28 U.S.C. § 1331 in that the claims  
 10 alleged herein arise under the laws of the United States due to Defendants' tortious conduct of  
 11 fraud. Furthermore, this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332 because  
 12 there is complete diversity of citizenship between the parties; Plaintiffs are domiciled in Oregon,  
 13 Defendant MortgageIT (MIT) is domiciled in New York, Deutsche Bank (DB) is domiciled in  
 14 Germany, Mortgage Electronic Registration Systems, Inc. (MERS) is domiciled in Delaware,  
 15 CitiMortgage (CM) is domiciled in Missouri and Defendant Cal-Western Reconveyance  
 16 Corporation (CWRC) is domiciled in California.

## 17 **III. PARTIES**

18 Plaintiffs are, and at all times relevant to this Petition were, the owner of the Subject  
 19 Property and at all times relevant to this Petition domiciled in Oregon. The Subject Property is  
 20 legally described as:

21 LOT 3, BLOCK 15, RIVERCREST PARK ADDITION NO. 2, IN THE CITY  
 22 OF OREGON CITY, CLACKAMAS COUNTY, OREGON

23 Defendant **MortgageIT**, doing business in Oregon, is a foreign business corporation  
 24 domiciled in New York with its principal place of business at 60 Wall Street, New York, NY  
 10005. Its phone number is (212) 651-7700. Defendant's registered agent is CT Corporation

1 System, 388 State Street, Suite 420, Salem, OR 97301. See **Exhibit 1** - Oregon SoS  
2 records/MIT. MIT was acquired by DB on July 12, 2006. See **Exhibit 2** – Deutsche Bank News  
3 Release.

4 Defendant **DB** is, on information and belief, a foreign corporation, which does business  
5 in Oregon. DB does business illegally in Oregon because it does not have a registered agent in  
6 Oregon. See **Exhibit 3** - Oregon SoS records/DB. DB has a U.S. principal office located at 60  
7 Wall Street, New York, NY 10005. Its telephone number is (212) 250-2500. Defendant DB is a  
8 German business corporation with an office in Manhattan. DB acquired the business of Defendant  
9 MortgageIT, Inc. on or about January 3, 2007. Since DB acquired MortgageIT, DB has operated the  
10 business of MortgageIT as part of its residential mortgage business based in Manhattan.

11 Defendant **MERS** is a Delaware corporation engaged in the business of holding legal title  
12 to mortgages. It does business in Oregon as evidenced by inclusion of its name on Deeds of Trust  
13 appearing in Oregon land records. Defendant MERS does business in Oregon illegally because  
14 MERS is not registered to do business in Oregon. See **Exhibit 4** - Oregon SoS records/MERS.  
15 MERS operates a national electronic registry that tracks beneficial ownership interests and  
16 servicing rights associated with residential mortgage loans and any changes in those interests or  
17 rights. There are approximately 5,000 participating members, of which 3,000 are residential  
18 mortgage servicers. Members register loans and report transfers, foreclosures, and other changes  
19 to the status of residential mortgage loans on the MERS System. There are currently  
20 approximately 31 million active residential mortgage loans registered on the MERS System. The  
21 MERS website ([www.mersinc.org](http://www.mersinc.org)) displays the address of 1818 Library Street, Suite 300,  
22 Reston, VA 20190 as the principal office location. Its telephone number is (800) 646-6377.  
23 MERS serves as mortgagee of record and nominee for the participating members in local land  
24 records. MERS takes action as mortgagee through documents executed by “certifying officers”

1 of MERS. MERS has designated these individuals, who are officers or employees of Members  
2 or certain third-parties who have contractual relationships with members, as officers of MERS.  
3 By virtue of these designations, the certifying officers execute legal documents in the name of  
4 MERS, such as mortgage assignments and lien releases.

5 Defendant CM has done and continues to do business in this state as a foreign business  
6 corporation. CM's Registered Agent is CT Corporation System, 388 State Street, Suite 420,  
7 Salem, OR 97301. The CM principal office is located at 1000 Technology Dr. O'Fallon, MO  
8 63368. Its telephone number is (800) 283-7918. See Exhibit 5 - Oregon SoS records/CM. The  
9 mortgage lending unit of Citigroup, CM, originates and services residential mortgages  
10 throughout the US. It manages most of its parent's \$170 billion mortgage portfolio. CM also  
11 offers refinancing and investment products. The company sells through retail, online, and  
12 correspondent channels. In 2009 Citigroup separated CM and other money-losing units such as  
13 CitiFinancial into a new business called Citi Holdings.

14 Defendant CWRC is, on information and belief, a foreign corporation, which does  
15 business in Oregon. CWRC's registered agent is National Registered Agents, Inc., 325 13th  
16 Street NE, Suite 501, Salem, OR 97301. See Exhibit 6 - Oregon SoS records/CWRC. CWRC's  
17 principal place of business is 525 E. Main, El Cajon, CA 92020. Its telephone number is  
18 (800) 546-1531. At all times relevant to this Complaint, Plaintiffs allege Defendant CWRC was  
19 an agent for the putative Lender. CWRC did not and does not have a business location in  
20 Oregon.

#### 21 IV. JUDICIAL NOTICE

22 Plaintiffs request this Court take judicial notice, pursuant to FRE, Rule 201(d), of the  
23 Exhibits included with this Complaint, as follows: 1) Exhibits 1 – 6 Oregon Secretary of State  
24 business records searches, 2) Exhibit 7 - Promissory Note, 3) Exhibit 8 - Deed of Trust, 4)

1 Exhibit 9 - Assignment of Deed of Trust, 5) Exhibit 10 – Substitution of Trustee, 6) Exhibit 11 –  
 2 Notice of Default and Election to Sell, 7) Exhibit 12 – Notice of Trustee Sale, and 8) Exhibit 13  
 3 – Fannie Mae Ownership. Federal Rule of Evidence 201 states that a court may take judicial  
 4 notice of a fact outside the pleadings if the fact is “capable of accurate and ready determination  
 5 by resort to sources whose accuracy cannot reasonably be questioned.” *Lee v. City of Los*  
 6 *Angeles*, 250 F.3d 668, 689 (9th Cir. 2001). Plaintiffs affirm that the various exhibits exist, but  
 7 Plaintiffs dispute the veracity of Exhibits 6 through 12 for the reasons explained below.

## 8 V. FACTS

9 On or about January 24, 2007, Plaintiffs consummated a refinance loan, number  
 10 40752449, of the Subject Property with MIT by signing a Promissory Note in favor of MIT, as  
 11 purported Lender, for \$333,000. See Exhibit 7 – Promissory Note. See also Plaintiffs Affidavit  
 12 ¶ 2.

13 On or about January 24, 2007, Plaintiffs signed a Deed of Trust in favor of non-party  
 14 Trustee, Western Title and Escrow Company, hereinafter “WTC,” for \$333,000. The Deed of  
 15 Trust contains language at Paragraph 22 as to who has the authority to accelerate the payment of  
 16 the Promissory Note, to wit: “Lender shall give notice to Borrower...” [Emphasis added]

17 MIT did not Notice Plaintiffs that Plaintiffs were in default. See Plaintiffs’ Affidavit ¶¶ 6  
 18 & 7.

19 The Deed of Trust contains the following language:

20 (E) “MERS” is Mortgage Electronic Registration Systems, Inc, MERS is a  
 21 separate corporation that is acting solely as a nominee for Lender and  
 22 Lender’s successors and assigns, MERS is the beneficiary under this Security  
 Instrument, MERS is organized and existing under the laws of Delaware, and has  
 an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel.  
 (888) 679-MERS. [Emphasis added] See Exhibit 8 – Deed of Trust.

23 On or about March 15, 2011 CM claims to have become the successor in interest to the  
 24 Plaintiff’s Deed of Trust by and through a document titled “Assignment of Deed of Trust,”

1 signed by Scott Scheiner, Assistant Secretary of MERS and Notarized on the same day by Alex  
2 D. Grossman of Missouri. The document was entered into Clackamas County official records  
3 under the recorder's number, 2011-019535, on March 30, 2011. See **Exhibit 9 - Assignment of**  
4 **Deed of Trust.**

5 On or about March 15, 2011 CWRC claims to have become the successor trustee of the  
6 Deed of Trust by and through a document titled "Substitution of Trustee," signed by Scott  
7 Scheiner, Vice President, CitiMortgage, Inc and Notarized on the same day by Alex D.  
8 Grossman of Missouri. The document was entered into Clackamas County official records under  
9 the recorder's number, 2011-019536, on March 30, 2011. See **Exhibit 10 - Substitution of**  
10 **Trustee**

11 On or about April 7, 2011 Plaintiffs received a document titled "Notice of Default and  
12 Election to Sell," created, recorded and sent to Plaintiffs by CWRC, the signatory of which was  
13 Yvonne J. Wheeler, A.V.P. (presumably Assistant Vice President), a known robo-signer, who  
14 signed the Notice on March 23, 2011. The Notice was not notarized until March 29, 2011 by  
15 Rosalyn Hall of California. The document was entered into Clackamas County official records  
16 under the recorder's number, 2011-019537, on March 30, 2011. See **Exhibit 11 - Notice of**  
17 **Default and Election to Sell.**

18 On or about April 7, 2011 Plaintiffs received a document titled "Trustee's Notice of Sale"  
19 from CWRC dated March 23, 2011 and signed by an unknown person, whose corporate capacity  
20 is absent and unknown. The document bears a certification stamp with the signature of Naomi  
21 Feistel, claiming "I CERTIFY THIS TO BE A TRUE AND CORRECT COPY OF THE  
22 ORIGINAL." The signature on the certification stamp and the signature as a designee of CWRC  
23 are different. No acknowledgement or jurat notarization is present. See **Exhibit 12 - Trustee's**  
24 **Notice of Sale. See also Plaintiffs' Affidavit ¶ 8.**

1 The Notice of Trustee Sale set the date for auction of Plaintiffs' property for August 1,  
2 2011 at 1:00 p.m. standard time at the Main Street entrance to the Clackamas Court Courthouse,  
3 807 Main Street, Oregon City, County of Clackamas, State of Oregon. The sale was  
4 subsequently delayed to September 1, 2011.

5 Despite Plaintiffs' diligence and good faith efforts, Plaintiffs have been unable to  
6 determine with certainty the Beneficiary of Plaintiffs' Promissory Note. Plaintiffs queried both  
7 the Fannie Mae and Freddie Mac websites to learn that Fannie Mae is the purported owner of the  
8 Plaintiffs' Promissory Note. See Exhibit 13 – Fannie Mae Ownership. The purported  
9 ownership is contrary to O.R.S. 86.735 because the transaction is unrecorded in Clackamas  
10 County land records.

## 11 VI. DECLARATORY JUDGMENT

12 Plaintiffs reaffirm and reallege each and every paragraph hereinabove as if set forth fully  
13 below.

14 There are two bodies of law impacting mortgage foreclosure in non-judicial foreclosure  
15 states; 1) contract law, and 2) statutory law. The explanation below will examine each body of  
16 law separately.

17 Necessarily, contract law must be the first to be examined. All disputes sounding in  
18 contract find their origin in a breach of a legal duty contained within the terms and conditions of  
19 the contract. If the contract is invalid, illegal or otherwise void the legal duty cannot be  
20 breached. If the contract is valid, then the legal duty is examined to see if a breach or default has  
21 occurred. The default must be factually supported by competent evidence. If the default can be  
22 established, then and only then is statutory law applied to provide relief to the aggrieved party.

23 Fraud vitiates the entire contract. *Coson v. Roehl*, 63 Wn.2d 384, 387 P.2d 541 (Wash.,  
24 1963). In the context of mortgage foreclosure the contract is found in the Promissory Note and



1 the Deed of Trust. The originator of the loan, MIT, fraudulently misrepresented their capacity as  
 2 a Lender. MIT is a mere loan or mortgage broker having no title to or ownership of the asset  
 3 loaned; the money to fund the loan. The money to fund the loan came from an unknown third  
 4 party with whom MIT contracted and was paid a fee.

5 The entire foreclosure process must be construed in the context of this country's system  
 6 of jurisprudence, where anyone who advances an affirmative claim has the burden of  
 7 proving the claim, to the extent that fidelity is shown to the Federal Rules of Civil Procedure,  
 8 Rules of Evidence, oath of office and judicial canons where the truth is sought within the realm  
 9 of substantive and procedural due process.

#### 10 I. CONTRACT LAW

11 The foreclosure process begins when a borrower is deemed to have defaulted. A default  
 12 is defined in Black's Law Sixth Edition as a "failure to perform a legal or contractual duty." The  
 13 Ninth Circuit has followed the holding in *Grinstead v. U.S.*, 122 F.3d 1071 (C.A.9 (Cal.), 1997),  
 14 where a default is deemed to be a "Failure to pay when due any debt evidenced hereby or  
 15 perform any covenant of agreement hereunder shall constitute default."

16 To default, the Obligor, the Plaintiffs in this case, must first be bound by a legal duty  
 17 contained within the four corners of a valid contract. Before a default can occur a valid and  
 18 legally enforceable contract must first be struck. Such contract must contain certain elements, to  
 19 wit: 1) An offer, 2) A strict acceptance, 3) Legal purpose, 4) **Mutuality of obligation**, 5)  
 20 **Consideration**, and 6) Competent parties. *Vick v. Henry Ford & Son*, 17 F.(2d) 919. Plaintiffs  
 21 focus on consideration and mutuality of obligation.

22 Consideration is the product of a bargained-for exchange, *Colorado Nat'l Bank of Denver*  
 23 *v. Bohm*, 286 F.2d 494, 496 (9th Cir.1961), consisting in either a benefit to the promisor or a  
 24 detriment to the promisee, *Twin City Fire Ins. Co. v. Philadelphia Life Ins. Co.*, 795 F.2d 1417,



1 1427 (9th Cir.1986). Like other essential elements of a contract, the consideration given in  
2 exchange for a promise must be specified with certainty. *Jackson v. Grant*, 890 F.2d 118, 120  
3 (9th Cir.1989); *Transamerica Equipment Leasing Corp. v. Union Bank*, 426 F.2d 273, 274 (9th  
4 Cir.1970). For a contract to be enforceable, its terms must be "reasonably certain" and must  
5 "provide a basis for determining the existence of a breach and for giving an appropriate remedy."  
6 *Restatement (Second) of Contracts Sec. 33* (1981). Plaintiffs allege no consideration because the  
7 funding Plaintiffs received was the rightful property of a third party, not MIT.

8       Mutuality of obligation, otherwise known as meeting of the minds, is an issue of fact.  
9 *Milgard Tempering, Inc. v. Selas Corp. of America*, 902 F.2d 703, 712 (9th Cir.1990). Mutuality  
10 of obligation refers to the parties' mutual understanding and assent to the expression of their  
11 agreement. *Weynand v Weynand*, 990 S.W.2d 843, 846 (Tex. App.-Dallas 1999, pet. denied).  
12 There is no dispute that MIT claims to be a Lender of the funds required to refinance the Subject  
13 Property as is clearly shown in the Promissory Note and Deed of Trust. Plaintiffs signed both  
14 documents with the expectation and understanding that MIT was the Lender, when in fact, MIT  
15 was not the Lender. The money to fund the refinance came from an undisclosed third party,  
16 most likely one or more investors procured through securitization of Plaintiffs' loan. Further,  
17 Plaintiffs did not know, nor could Plaintiffs have reasonably known that Plaintiffs loan was to be  
18 securitized; causing Plaintiffs' loan to be more costly than a traditional non-securitized loan.

19       The contract (Promissory Note and Deed of Trust) is void for at least two reasons. First,  
20 MIT did not advance money or credit therefore the contract fails for lack of consideration. See  
21 Plaintiffs' Affidavit ¶ 3. Second, MIT fraudulently and deliberately withheld the true terms and  
22 conditions of Plaintiffs' loan, that Plaintiffs loan would be securitized and be overpriced, hence  
23 preventing mutuality of obligation.

1        Plaintiffs deny that Plaintiffs loan on the Subject Property is in default. Plaintiffs allege  
2 that the loan is not in default to any of the named Defendants. Plaintiffs' assertion could easily  
3 be proved with loan level files in Defendants' possession. The Trustee, the Master Servicer and  
4 the Sub Servicer, if any, are obligated by and through the Pooling and Serving Agreement to pay  
5 the Obligee, in the event the borrower does not.

6        When Courts finally becomes fed up with all of the misbehavior in the foreclosure  
7 industry and FOLLOW THE MONEY, the Court will eliminate the obfuscation of false  
8 documentation, save judicial resources and achieve justice. To put it the most simple terms  
9 possible, this is a matter of substance over form.

10        Plaintiffs allege MIT was not the Obligee, but rather a mortgage broker collecting a fee  
11 for its services. The identity of the true Obligee was purposefully concealed as was the entire  
12 scheme and artifice of securitization.

13        Defendant MIT represented to Plaintiffs that MIT advanced money or credit in the form  
14 of a loan to refinance the Subject Property. The material representation was false, MIT knew the  
15 representation was false, intending and expecting Plaintiffs to act on the falsity; Plaintiffs did not  
16 know the representation was false and subsequently and justifiably relied on it to Plaintiffs'  
17 ultimate detriment.

18        Plaintiffs were proximately damaged by Defendant MIT's fraud because the omissions,  
19 misrepresentations and deception as to who was the Obligee and that the loan was securitized  
20 caused Plaintiffs to over pay for the loan compared to a loan that is not securitized. The loan was  
21 laced with myriad fees of many players in the securitization scheme, each pirating their share.  
22 Plaintiffs have a right and MIT has duty to disclose the Obligee AND to disclose completely all  
23 material terms and conditions. MIT did not!

1 Defendant MIT was a mere mortgage or loan BROKER. The money or credit that was  
 2 advanced was the rightful property of an unknown entity alleged to be one or more investors.  
 3 Defendant MIT's books and records will show that MIT collected a fee for HANDLING the  
 4 money or credit advanced to Plaintiffs and as such the transaction will appear on MIT's income  
 5 statement only! If MIT was a true and bona fide Obligee, the transaction would appear on MIT's  
 6 balance sheet.

## 7 II. STATUTORY LAW

8 The second body of law, statutory law, is triggered only after it has been determined, in  
 9 the context of a mortgage that 1) the borrower owed a legal duty to a creditor, and 2) the legal  
 10 duty had been breached in the nature of a default.

11 Although the allegations in the Contract Law section should be sufficient to warrant the  
 12 relief herein requested, Plaintiffs, out of an abundance of caution, allege that MERS fatally  
 13 contaminated the chain of title and as a result nullified the Deed of Trust, making the Promissory  
 14 Note an unsecured instrument as will be further explained below.

15 Securitization is the financial practice of pooling various types of contractual debt such as  
 16 residential mortgages, commercial mortgages, auto loans or credit card debt obligations and  
 17 selling said debt as bonds, pass-through securities, or Collateralized Mortgage Obligations  
 18 (CMOs), to various investors. The principal and interest on the debt, underlying the security, is  
 19 paid back to the various investors regularly. Securities backed by mortgage receivables are called  
 20 mortgage-backed securities.

21 The instant a loan, as the one here, was sold into the securitization pipeline, the originator  
 22 is paid in full, MIT in this case. The purchasing entity then owns the underlying loan and the  
 23 right to the cash flow therefrom.

24 Securitization involves a daisy chain of many entities, all of whom are paid a fee or a

1 commission resulting in a loan that is more costly than a loan that is not securitized.

2 The actors in the securitization scheme all knew or should have known the cost of the  
3 loan was overstated and that the overstated loan would obscenely profit Defendants and  
4 simultaneously harm Plaintiffs.

5 **A. CWRC**

6 Defendant CWRC has taken the unverified position by and through the Notice of Default  
7 and Election to Sell affirmatively claiming that CWRC is the current trustee and possesses the  
8 authority to execute the power of sale. Plaintiffs dispute the claim and allege CWRC has no  
9 such power because the Substitution of Trustee document is invalid. CM does not have the  
10 authority of a beneficiary and cannot effect the transfer.

11 CWRC affirmatively claimed, through a false and invalid Substitution of Trustee  
12 document AND subsequently through a false and invalid Notice of Default and Election to Sell  
13 to be the authorized trustee and to possess the power of sale, when CWRC knew such material  
14 representation was false, uttered with the intention that Plaintiffs would be and were entitled to  
15 rely upon the falsity to Plaintiff's ultimate detriment. The representation was false because the  
16 Promissory Note and the Deed of Trust are nullities due to the purported Lender not being the  
17 Lender in fact, or Creditor AND that as will be explained below CM lacks the authority to  
18 substitute the trustee because the MERS Assignment of Deed of Trust to CM was invalid; MERS  
19 does not possess the authority of a beneficiary to effect the assignment.

20 CWRC cannot be the successor trustee for two reasons. First, the so-called Lender MIT  
21 lacked the authority to assign the loan or any of its components to a successor because MIT was  
22 not a Lender in fact (beneficiary). Second, as explained immediately above, MERS invalidated  
23 both the CM assignment and the CWRC substitution.

1        Plaintiffs allege Defendants by and through Defendant CWRC, agent of the loan's  
 2 putative beneficiary and purported successor trustee to Plaintiff's Deed of Trust, wrongfully  
 3 conspired to initiate a non-judicial foreclosure proceeding, pursuant to the Notice of Default and  
 4 Election to Sell and Notice of Trustee Sale mentioned above, to foreclose on a mortgage  
 5 pertaining to the Subject Property.

#### 6        B. CM

7        Defendant CM has taken the unverified position affirmatively claiming by and through  
 8 the Assignment of Deed of Trust that CM talismanically possesses the authority to invoke the  
 9 power of sale for some heretofore unknown and unnamed beneficiary entitled to payment.  
 10 Plaintiffs dispute Defendant's claim and allege CM has no such power.

11        The Assignment of Deed of Trust above purports to transfer the Deed of Trust only.  
 12 Plaintiffs allege that the Promissory Note was not transferred, but instead separated from the  
 13 Deed of Trust, nullifying the latter. The Deed of Trust follows the Promissory Note, not vice  
 14 versa. *Saxon Mortg. Serv., Inc. v. Hillery*, No. C-08-4357 EMC, 2008 U.S. Dist. LEXIS 100056,  
 15 2008 WL 5170180, at \*5 (N.D. Cal. Dec. 9, 2008) (same as Bellistri); *In re Wilhelm*, 407 B.R.  
 16 392 (Bankr. D. Idaho 2009) (successor lender had no standing to seek relief from bankruptcy  
 17 stay and move forward with foreclosure because MERS had no authority to transfer the note).

18        Plaintiffs attempted a loan modification. First, though, Plaintiffs were instructed to stop  
 19 their payments. See Plaintiffs' Affidavit ¶¶ 4 & 5. Then Plaintiffs were run around the barn  
 20 countless times, where CM would "lose" documents, Plaintiffs would resubmit and then CM  
 21 would lose them again. Finally, Plaintiffs were turned down and were in a much worse position  
 22 than had then not applied for a loan modification in the first place.

#### 23        C. MERS

1 Defendant MERS has taken the unverified position affirmatively claiming that MERS is  
2 Beneficiary under the Security Instrument (Deed of Trust), while simultaneously asserting that  
3 MERS is acting solely as a nominee for Lender and Lender's successors.

4 Plaintiffs dispute Defendant's claim that MERS is a Beneficiary and affirm and re-allege  
5 that MERS is merely a nominee without the authority of Beneficiary.

6 Under the Oregon Trust Deed Act, "'Beneficiary' means the person named or otherwise  
7 designated in a trust deed as the person for whose benefit a trust deed is given, or the person's  
8 successor in interest..." O.R.S. 86.705(1).

9 Although the trust deed lists MERS as the nominal beneficiary "solely as a nominee for  
10 Lender..." the deed makes clear that MERS is not "the person for whose benefit a Deed is  
11 given," O.R.S. 86.705(1), for the following reasons: 1) The trust deed lists MIT, not MERS, as  
12 "Lender." 2) All payments on the loan are owed to MIT, not MERS. 3) MIT, not MERS, "may  
13 invoke the power of sale and any other remedies permitted by applicable law." *Hooker v. Nw Tr*  
14 *Serv Inc.* (D. Or., 2011). See also *In re Allman* (Bkrtcy.D.Or. Aug. 24, 2010) and *In Re Donald*  
15 *E. McCoy Bankr.Or.*, 2011.

16 MERS has failed to establish the existence of an agency relationship with the current or  
17 successor beneficiary and Plaintiffs allege MERS has none.

18 Plaintiffs allege MERS to be a record keeper only, without any of the rights and duties of  
19 a Beneficiary, including the right to payment from Plaintiffs.

20 If Defendant CM is the current successor to the Deed of Trust, Plaintiffs allege  
21 CitiMortgage lacks the authority to invoke the power of sale and as a result CWRC, appointed  
22 by CM, is not authorized to sell the Subject Property.



1       Plaintiffs allege CWRC lacks the authority to execute the power of sale because the  
2 Substitution of Trustee appointing CWRC is invalid and as a result CWRC is not authorized to  
3 sell the Subject Property.

4       Plaintiffs further allege that Plaintiffs' loan was securitized and that the Promissory Note  
5 owner is the trust holding assets for the certificateholders, otherwise known as investors, who  
6 have not assigned their right under the Promissory Note and/or Deed of Trust to any of the  
7 Defendants in this Complaint. In fact, neither Defendant MIT nor Defendant CM lent Plaintiffs  
8 money or credit. MIT was a mere straw man and mere mortgage broker but integral members of  
9 an association in fact operating in interstate commerce and engaged, *inter alia*, in deceptive acts  
10 to the ultimate detriment of Plaintiffs.

11       Defendants deceived Plaintiffs by claiming Defendants, in two or more writings within a  
12 ten year period, possessed the authority to invoke the power of sale and sell the Subject Property  
13 when in fact Defendants had no such power. The deception continues to the present time and is  
14 suspected to continue into the future.

15       Defendants - the ones who have made an affirmative claim against Plaintiffs' property -  
16 have not demonstrated that they have suffered an actual or threatened injury as a consequence of  
17 any alleged default. In fact, there is no competent evidence of a default whatsoever. Only a  
18 conclusory and unsworn allegation of default has been made, lacking any factual sufficiency  
19 whatsoever. The Notice of Default and Election to Sell is the document that purports to establish  
20 Plaintiffs' default, however, upon careful examination, it is clear that the document contains only  
21 an ACKNOWLEDGEMENT notarization and not a JURAT notarization. Therefore, the  
22 document is unabashed hearsay and without a competent fact witness it is mere drivel. The  
23 default can only be affirmatively established by and through the **books and records of original**  
24 **entry** belonging to the beneficiary/creditor; a process that is otherwise known as: FOLLOW



1 THE MONEY! Plaintiffs allege that they are not in default because the bona fide creditor or  
 2 creditors has/have yet to be identified. The Defendants in this action are strangers and  
 3 interlopers. Distinct and palpable injury is legally required under applicable state and federal  
 4 law in order for Defendants to satisfy the legal prerequisite proving Defendants have a sufficient  
 5 personal stake in and legal standing to institute the foreclosure on the Subject Property. No such  
 6 injury has been or can be established.

## 7 **VII. CONCLUSION**

8 This Court has knowledge and notice that there is a cloud on the title of the Subject  
 9 Property which Defendants have failed or refused to extinguish. The cloud arises out of  
 10 Defendants filing or causing to be filed into the county records a document styled "Notice of  
 11 Default and Election to Sell." Plaintiffs have been damaged by Defendants' tortious conduct and  
 12 interference with Plaintiffs' right to be left alone and enjoy peaceable ownership of the Subject  
 13 Property.

14 Plaintiffs affirmatively acknowledge an obligation exists; the entity to which repayment  
 15 is to be made and the amount of the repayment is unknown. Plaintiffs allege fraud has destroyed  
 16 the Promissory Note and Deed of Trust and MERS has contaminated directly and indirectly  
 17 succession documents. It is crucial that Defendants do not get a free house!

## 18 **VIII. RELIEF REQUESTED**

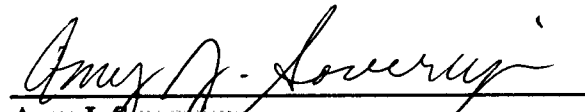
19 **WHEREFORE**, Plaintiffs requests that this court:

- 20 a. Declare Defendant MIT is a mortgage broker and not a Lender as depicted in the
- 21 Promissory Note and Deed of Trust.
- 22 b. Declare Defendant MIT lacks the authority to assign Plaintiffs' loan.
- 23 c. Declare Defendant MERS is solely a nominee, is not an entity entitled to payment
- 24 and therefore is not a beneficiary.

- d. Declare Defendant MERS cannot assign Plaintiffs' Deed of Trust.
- e. Declare CM an invalid assignee respecting the Subject Property.
- f. Declare CWRC an invalid assignee respecting the Subject Property.
- g. An Order for Plaintiffs to recover their costs.
- h. An Order to Show Cause why an evidentiary hearing should not take place.
- i. An Order for Re-alignment of the parties.
- j. Declare that Plaintiffs' obligation for the loan still exists, but the payee and the amount is unknown

Prepared, signed and submitted on Aug. 17, 2011 by:

  
 Rick L. Sovereign  
 401 Cherry Avenue  
 Oregon City, OR 97045  
 C: (503) 329-2013  
 E-mail: soverco@earthlink.net

  
 Amy J. Sovereign

#### IX. VERIFICATION

I, Rick L. Sovereign, of legal age and competent to testify, verify under penalty of perjury that the factual averments in the above and foregoing petition, complaint, and claim are truthful and accurate to the best of my knowledge and all documents verifying my claims are now in my possession. This action is well grounded in fact and warranted by existing law and in full and complete compliance with FRCP, Rule 11(a) and (b). I declare under the penalty of perjury under the laws of the State of Oregon that the foregoing is true and correct.

  
 Rick L. Sovereign

#### X. INDIVIDUAL ACKNOWLEDGMENT

STATE OF OREGON

COUNTY OF CLACKAMAS

Before me, the undersigned, a Notary Public in and for said County and State on this  
14th day of August, 2011, personally appeared Rick L. Sovereign to me known to be the  
identical person who executed the within and foregoing instrument and acknowledged to me that  
he executed the same as his free and voluntary act.

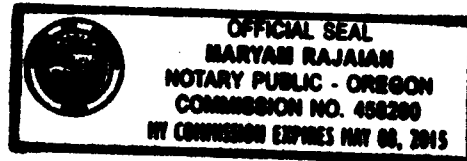
Given under my hand and seal the day and year last above written.

My commission expires:

MAY 08 2015

*Maryam Rajian*

Notary Public



**XI. AFFIDAVIT**

We, Rick L. Sovereign and Amy J. Sovereign, of age and competent to testify, state as follows based on our own personal knowledge and under penalty of perjury

1. That the Subject Property is located at 401 Cherry Avenue, Oregon City, OR.
2. That Affiants refinanced the subject property with MIT on January 24, 2007.
3. That Affiants are not in possession of authenticated evidence establishing MIT lent or advanced its own money or reserves to Affiants.
4. That Affiants attempted a loan modification through CitiMortgage who instructed Affiant to stop making payments.
5. That Affiants stopped making mortgage payments on or about August 2010 after continuously making timely payments since inception.
6. That Affiants did not receive a Notice from the MIT that Affiant's loan was in default.
7. That Affiants are not in possession of authenticated evidence establishing Plaintiffs in default of any obligation to MIT or its successors or assigns, if any.
8. That Affiants received a document titled Notice Default and Election to Sell containing a mere acknowledgement notarization, not a jurat notarization.

This affidavit is made in good faith and under penalty of perjury that the above statements are true and correct to the best recollection of the Affiant.

  
Rick L. Sovereign, Affiant

  
Amy J. Sovereign, Affiant

**XII. ATTESTATION**

STATE OF OREGON

COUNTY OF CLACKAMAS

1 Before me, the undersigned, a Notary Public in and for said county and state on this  
2 \_\_\_ day of August, 2011, personally appeared Rick L. Sovereign and Amy J. Sovereign to me  
3 known to be the identical persons who executed the within and foregoing instrument and  
4 acknowledged to me that they executed the same as their free and voluntary act. Given under my  
5 hand and seal the day and year last above written.

6 Maryam Rajaman

7 Notary Public, residing: Oregon

8 My Commission Expires: May 08 2015

